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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,761	11/04/2003	James D. Carper	100-00222	6335
26753 7590 02/17/2009 ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202				
EXAMINER				
MATZEK, MATTHEW D				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
02/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/700,761

Applicant(s)

CARPER ET AL.

Examiner

MATTHEW D. MATZEK

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-11 and 67-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11 and 67-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

1. The amendment dated 11/14/2008 has been fully considered and entered into the Record. Independent claim 1 has been amended and contains no new matter. Claims 1-3, 5-11 and 67-70 are currently pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 2, 7, 8 and 67 are rejected under 35 U.S.C. 103(a) as obvious over Chen et al. (US 6,271,278 B1) in view of Inoue et al. (US 6,893,715).

a. Chen et al. disclose a film with auto-adhesive properties (abstract) for use in a disposable absorbent product intended for the absorption of bodily fluids. Said film may be used as a coating or part of a co-extruded component of a composite film for applications in disposable absorbent products (col. 9, lines 63-67). The film comprises two components with the first being a block copolymer and the second component being polyethylene (col. 1, lines 49-55). The block copolymer may be poly(styrene)-co-poly(ethylene-propylene)-co-poly(styrene) (col. 3, lines 26-32). The auto-adhesive film exhibits peel strength of 400 grams per inch or more (col. 8, lines 28-32). Chen et al. are silent as to the product's refastenability, however the article is used in the same field of endeavor and meets the claimed peel strength the invention of Chen et al. would necessarily be refastenable. Chen et al. disclose that the auto-adhesive material may be used as coating for a multi-layer film or be incorporated into a composite laminate, but fails to teach the structure/composition of the would be composite.

b. Inoue et al. disclose a resin composition for sealants and films (abstract) comprising multiple layers including a (P) layer comprised of propylene and a (S) layer comprised of ethylene, propylene and butane polymers (col. 5, lines 31-45) adjacent to the (P) layer (col. 2, lines 13-18). The laminates of Inoue et al. may comprise three or more layers (col. 2, lines 32-47) and said laminates may be folded to face each other and sealed to form an "easy peel container" (col. 1, lines 11-18). The laminate is to be structured so that the (P) layers face one another when bonded (col. 2, lines 22-26). These teachings taken together provide for a four-layer laminate with two interior (S) layers with (P) layers bonded to outer faces of said (S) layers (P/S/S/P). The (S) layers provide for the claimed composition of the base layers. Therefore, Examiner takes the position that the (S) layers necessarily possess the claimed non-stretchability.

c. Since Chen et al. and Inoue et al. are from the same field of endeavor (i.e. adhesive fasteners), the purpose disclosed by Inoue et al. would have been recognized in the pertinent art of Chen et al.

d. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Chen et al. with the support layers, (S) layer comprised of ethylene, propylene and butane polymers (col. 5, lines 31-45) adjacent to the polyolefin layers, with the motivation of providing support to the auto-adhesive coating layer of Chen et al.

e. Although Chen et al. and Inoue et al. do not explicitly teach the claimed feature of shear strength greater than 4 hours, or the manner in which said shear strength is measured, it is reasonable to presume that said property is inherent to the combined

disclosure. Support for said presumption is found in the use of like materials (i.e. both layers are made of polyolefin). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of shear strength greater than 4 hours via the claimed method of measure would obviously have been present once the Inoue et al. product is provided.

f. The current claims do not require an additional coating layer on the cling film layers. Claim 2 is rejected as the interior (S) layers serve as the claimed first and second base layers and are polyolefin films.

3. **Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 6,271,278 B1) in view of Inoue et al. (US 6,893,715) as applied to claim 1 above, and further in view of Dobreski et al. (US 4,820,589).**

Chen et al. disclose the claimed invention except that they use polyolefins instead of copolymers of polyolefin and acrylic or vinyl acetate, Dobreski et al. shows that polyolefins and copolymers of polyolefin and acrylic or vinyl acetate are equivalent materials known in the art of cling films (col. 2, lines 53-62). Therefore, because these two polymers were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute polyolefins for copolymers of polyolefin and acrylic or vinyl acetate.

4. **Claims 3, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 6,271,278 B1) in view of Inoue et al. (US 6,893,715) as applied to claim 1 above, and further in view of Tuman et al. (US 2001/0018110 A1).** Chen et al. are silent as to the use of a breathable, nonwoven base layer.

a. Tuman et al. teach the creation of a breathable web material that may serve as a refastenable article (abstract). The breathable refastening system may be used in diapers [0041]. The web of Tuman et al. is capable of adhering to itself (i.e. auto-adhesive) [0054] around another object. The base material upon which the fastening system is conjoined may be an inflexible nonwoven web [0060].

b. Since Chen et al. and Tuman et al. are from the same field of endeavor (i.e. auto-adhesive fasteners), the purpose disclosed by Tuman et al. would have been recognized in the pertinent art of Chen et al.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Chen et al. with the breathability and nonwoven substrate motivated by the desire to create a breathable article as disclosed by Tuman et al.

5. Claims 68 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 6,271,278 B1) in view of Inoue et al. (US 6,893,715) as applied to claim 2 above, and further in view of Mascarenhas et al. (US 5,888,615).

Chen et al. disclose the claimed invention except that they use polyolefins instead of nylon or polyethylene methacrylic acid, Mascarenhas et al. shows polyolefins and nylon or polyethylene methacrylic acid are equivalent film materials known in the art of cling films (col. 11, lines 24-40). Therefore, because these polymers were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute polyolefins for nylon or polyethylene methacrylic acid.

6. **Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 6,271,278 B1) in view of Inoue et al. (US 6,893,715) as applied to claim 2 above, and further in view of Velazquez et al. (US 5,614,297).**

Inoue et al. disclose the claimed invention except that they use polyolefins instead of PVC. Velazquez et al. shows that polyolefins and PVC are equivalent film materials known in the art of cling films (col. 1, lines 11-15). Therefore, because these two polymers were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute polyolefins for PVC.

Comment [THM1]:
Stop cutting and pasting. Wrong ref cited. Also, is the showing of equivalents for accomplishing the same goal as the primary ref?

Double Patenting

7. Claims 1-3, 5-11 and 67-70 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 48-90 of copending Application No. 10/981,046 in view of Mann et al. (US 5,085,655). The composition of the applied application is the same as that which is instantly claimed, but the application fails to teach the use of a second auto-adhesive layer. As set forth in this Office Action two auto-adhesive layers may be adhered to one another for use in diapers. One would have been motivated to have made a second auto-adhesive layer as set forth in Mann et al. with the motivation of creating a cohesive tape system for diapers.

This is a provisional obviousness-type double patenting rejection.

8. Claims 1-3, 5-11 and 67-70 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-90 of copending Application No. 10/867,438 in view of Mann et al. (US 5,085,655). The composition of the applied application is the same as that which is instantly claimed, but the application fails to

teach the use of a second auto-adhesive layer. As set forth in this Office Action two auto-adhesive layers may be adhered to one another for use in diapers. One would have been motivated to have made a second auto-adhesive layer as set forth in Mann et al. with the motivation of creating a cohesive tape system for diapers.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

9. Applicant's arguments filed 11/14/2008 have been fully considered but they are not persuasive.

10. Applicant argues that it is Examiner's position that it would have been obvious to modify the invention of Chen et al. by incorporating the composition of Inoue et al. therein. Examiner has relied upon Chen et al. to teach the auto-adhesive, refastenable film layers and has looked to Inoue et al. for guidance as to appropriate structure and composition of support or base layers, not for the cling layer itself. Examiner has not relied upon Inoue et al. to teach or suggest an auto-adhesive (cling) composition.

11. Applicant argues that there is simply no motivation to combine what is taught in Inoue et al. with what is set forth in Chen et al. and even if one did combine the references, one would not arrive at the claimed invention, because said invention requires cling film layers having a peel strength of 600 grams per inch or less and a shear strength of greater than four hours, neither of which are set forth in Inoue et al. In the rejection set forth *supra*, Examiner has relied upon Chen et al. to disclose a composite film with auto-adhesive properties (abstract) for use in a disposable absorbent product. The auto-adhesive film exhibits peel strength of **400 grams per inch or more** (emphasis added) (col. 8, lines 28-32). Chen et al. are silent as to the product's

refastenability, however the article is used in the same field of endeavor and meets the claimed peel strength the invention of Chen et al. would necessarily be refastenable. Chen et al. disclose that the auto-adhesive material may be used as coating for a multi-layer film or be incorporated into a composite laminate, but fails to teach the structure/composition of the would be composite. Examiner then looks to Inoue et al. for guidance as to appropriate structure and composition of support or base layers, not for the cling layer itself. Examiner has not relied upon Inoue et al. to teach or suggest an auto-adhesive (cling) composition.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW D. MATZEK whose telephone number is (571)272-2423. The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on 571.272.1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew D Matzek/
Examiner, Art Unit 1794

/Norca L. Torres-Velazquez/
Primary Examiner, Art Unit 1794